

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Robert G. Taub

Mallory Post Office
Mallory, New York

Docket No. A2011-100

ORDER AFFIRMING DETERMINATION

(Issued January 13, 2012)

I. INTRODUCTION

On December 15, 2011, the Postal Service advised the Commission that it “will delay the closing or consolidation of any Post Office until May 15, 2012.”¹ The Postal Service further indicated that it “will proceed with the discontinuance process for any Post Office in which a Final Determination was already posted as of December 12, 2011, including all pending appeals.” *Id.* It stated that the only “Post Offices” subject to closing prior to May 16, 2012 are those that were not in operation on, and for which a Final Determination was posted as of, December 12, 2011. *Id.* It affirmed that it “will not close or consolidate any other Post Office prior to May 16, 2012.” *Id.* at 2. Lastly, the Postal Service requested the Commission “to continue adjudicating appeals as provided in the 120-day decisional schedule for each proceeding.” *Id.*

¹ United States Postal Service Notice of Status of the Moratorium on Post Office Discontinuance Actions, December 15, 2011 (Notice).

The Postal Service's Notice outlines the parameters of its newly announced discontinuance policy. Pursuant to the Postal Service's request, the Commission will fulfill its appellate responsibilities under 39 U.S.C. § 404(d)(5).

On September 28, 2011, Mark Burghart (Petitioner) filed a petition with the Commission seeking review of the Postal Service's Final Determination to close the Mallory, New York post office (Mallory post office).² The Final Determination to close the Mallory post office is affirmed.

II. PROCEDURAL HISTORY

On September 30, 2011, the Commission established Docket No. A2011-100 to consider the appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any responsive pleadings.³

On October 13, 2011, the Postal Service filed the Administrative Record with the Commission.⁴ The Postal Service also filed comments requesting that the Commission affirm its Final Determination.⁵

² Petition for Review received from Mark Burghart regarding the Mallory, New York post office 13103, September 28, 2011 (Petition).

³ Order No. 893, Notice and Order Accepting Appeal and Establishing Procedural Schedule, September 30, 2011.

⁴ The Administrative Record is attached to the United States Postal Service Notice of Filing, October 13, 2011 (Administrative Record). The Administrative Record includes, as Item No. 47, the Final Determination to Close the Mallory, New York Post Office and Establish Service by Rural Route Service (Final Determination). On November 22, 2011, the Postal Service filed a notice to correct errors in the cover pages of the Final Determination. No other changes were made. United States Postal Service Notice of Modification to Administrative Record [Errata], November 22, 2011.

⁵ United States Postal Service Comments Regarding Appeal, November 22, 2011 (Postal Service Comments).

Petitioner filed a participant statement supporting his Petition.⁶ On December 7, 2011, the Public Representative filed a reply brief.⁷

III. BACKGROUND

The Mallory post office provides retail postal services and service to 31 post office box customers. Final Determination at 2. One-hundred-thirty-four (134) delivery customers are served through this post office. The Mallory post office, an EAS-11 level facility, has retail access hours of 7:00 a.m. to 10:45 a.m., Monday through Friday, and 9:00 a.m. to 11:45 a.m. on Saturday. Lobby access hours are 7:00 a.m. to 11:00 a.m., Monday through Friday, and 9:00 a.m. to 12:00 p.m. on Saturday. *Id.*

The postmaster position became vacant on March 31, 2009, when the Mallory postmaster was reassigned. An officer-in-charge (OIC) was installed to operate the post office.⁸ Retail transactions average 12 transactions daily (14 minutes of retail workload). Post office receipts for the last 3 years were \$12,933 in FY 2008; \$17,950 in FY 2009; and \$18,103 in FY 2010. There are no permit or postage meter customers. *Id.* By closing this post office, the Postal Service anticipates savings of \$45,037 annually. *Id.* at 5.

After the closure, retail services will be provided by the Central Square post office located approximately 5 miles away.⁹ *Id.* at 2. Delivery service will be provided by rural carrier through the Central Square post office. *Id.* at 2. The Central Square post office is an EAS-18 level post office, with retail hours of 8:30 a.m. to 10:15 a.m. and 11:15 a.m. to 5:00 p.m., Monday through Friday, and 8:30 a.m. to 12:00 p.m. on Saturday. *Id.*

⁶ Participant Statement received from Mark Burghart, November 8, 2011 (Participant Statement).

⁷ Reply Comments of the Public Representative, December 7, 2011 (PR Reply Comments).

⁸ The record is unclear if the OIC is a non-career postmaster relief (PMR) or a career employee on temporary assignment to operate the post office. See Administrative Record, Item 15 at 1, Item 18 at 1, Item 33 at 1, Item 41 at 1, Item 42 at 1, Item 44 at 1, Item 47 at 2, 5, 6.

⁹ MapQuest estimates the driving distance between the Mallory and Central Square post offices to be approximately 5.7 miles (9 minutes driving time).

Two-hundred-thirty-four (234) post office boxes are available. *Id.* The Postal Service will continue to use the Mallory name and ZIP Code. *Id.* at 4, Concern No. 1.

IV. PARTICIPANT PLEADINGS

Petitioner. Petitioner opposes the closure of the Mallory post office. He asserts that, as a small business owner, closing the Mallory post office would be a great inconvenience and the trip to the new post office would increase his expenses. Petition at 1-2. He questions the Postal Service's calculation of economic savings, as the Mallory post office is run by a PMR receiving lower compensation than a postmaster. Participant Statement at 2.

Postal Service. The Postal Service argues that the Commission should affirm its determination to close the Mallory post office. Postal Service Comments at 1. The Postal Service believes the appeal raises three main issues: (1) the effect on postal services; (2) the impact on the Mallory community; and (3) the economic savings expected to result from discontinuing the Mallory post office. *Id.* at 6. The Postal Service asserts that it has given these and other statutory issues serious consideration and concludes that the determination to discontinue the Mallory post office should be affirmed. *Id.*

The Postal Service explains that its decision to close the Mallory post office was based on several factors, including:

- the postmaster vacancy;
- a minimal workload and low office revenue;
- alternative delivery and retail options (including the convenience of rural delivery and retail service);
- minimal impact on the community and employees; and
- expected financial savings.

Id. at 4. The Postal Service contends that it will continue to provide regular and effective postal services to the Mallory community when the Final Determination is implemented. *Id.* at 11.

The Postal Service also asserts that it has followed all statutorily required procedures and has addressed the concerns raised by Petitioner regarding the effect on postal services, the effect on the Mallory community, economic savings, and the effect on postal employees. *Id.*

Public Representative. The Public Representative concludes that in determining to close the Mallory post office, the Postal Service appears to have met the requirements of section 404(d)(2)(A). PR Reply Comments at 8-9. She concludes the decision should be affirmed. *Id.* at 10.

V. COMMISSION ANALYSIS

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal Service's determination to close or consolidate a post office on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds to be (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) without observance of procedure required by law; or (c) unsupported by substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.

A. Notice to Customers

Section 404(d)(1) requires that, prior to making a determination to close any post office, the Postal Service must provide notice of its intent to close. Notice must be given

60 days before the proposed closure date to ensure that patrons have an opportunity to present their views regarding the closing. The Postal Service may not take any action to close a post office until 60 days after its determination is made available to persons served by that post office. 39 U.S.C. § 404(d)(4). A decision to close a post office may be appealed within 30 days after the determination is made available to persons served by the post office. 39 U.S.C. § 404(d)(5).

The Administrative Record indicates the Postal Service took the following steps in reaching its Final Determination. On April 25, 2011, the Postal Service distributed questionnaires to customers regarding the possible change in service at the Mallory post office. Final Determination at 2. A total of 28 questionnaires were distributed and 12 were returned. On May 4, 2011, the Postal Service held a community meeting at the Mallory post office lobby to address customer concerns. Five customers attended. *Id.*

The Postal Service posted the proposal to close the Mallory post office with an invitation for comments at the Mallory and Central Square post offices from May 21, 2011 through July 22, 2011. Final Determination at 2. The Final Determination was posted at the same two post offices from August 24, 2011 through September 27, 2011. Administrative Record, Item No. 49.

The Postal Service has satisfied the notice requirements of 39 U.S.C. § 404(d).

B. Other Statutory Considerations

In making a determination on whether or not to close a post office, the Postal Service must consider the following factors: the effect on the community; the effect on postal employees; whether a maximum degree of effective and regular postal service will be provided; and the economic savings to the Postal Service. 39 U.S.C. § 404(d)(2)(A).

Effect on the community. Mallory, New York is an unincorporated community located in Oswego County, New York. Administrative Record, Item No. 16. The community is administered politically by the Town of Hastings. Police protection is provided by the New York State Police. Fire protection is provided by the Central

Square Fire Department. The community is comprised of retirees, the self-employed, and those who work in local businesses or commute to work in nearby communities. *Id.* Residents may travel to nearby communities for other supplies and services. See *generally* Administrative Record, Item No. 22 (returned customer questionnaires and Postal Service response letters).

As a general matter, the Postal Service solicits input from the community by distributing questionnaires to customers and holding a community meeting. The Postal Service met with members of the Mallory community and solicited input from the community with questionnaires. In response to the Postal Service's proposal to close the Mallory post office, customers raised concerns regarding the effect of the closure on the community. Their concerns and the Postal Service's responses are summarized in the Final Determination. Final Determination at 2-5.

Petitioner states that the post office has been an important part of the Mallory community and closing it would have a negative impact. Participant Statement at 3. The Postal Service contends that a community's identity derives from the interest and vitality of its residents and their use of its name and ZIP Code. Postal Service Comments at 8-9. Residents may continue to use the Mallory name and ZIP Code after the post office is closed. *Id.*

The Postal Service has adequately considered the effect of the post office closing on the community as required by 39 U.S.C. § 404(d)(2)(A)(i).

Effect on employees. The Postal Service states that the Mallory postmaster was reassigned on March 31, 2009 and that an OIC has operated the Mallory post office since then. Final Determination at 5. It asserts that after the Final Determination is implemented, the non-career postmaster relief (PMR) may be separated and that no other Postal Service employee will be adversely affected. *Id.*¹⁰

¹⁰ As noted above, the status of the OIC is unclear on the record. The postmaster was reassigned. If non-career, the OIC may be separated from the Postal Service. If on temporary assignment, the OIC will return to duties at a nearby post office. No other employees would be affected by the closing. See Postal Service Comments at 11.

The Postal Service has considered the possible effects of the post office closing on the OIC and has satisfied its obligation to consider the effect of the closing on employees at the Mallory post office as required by 39 U.S.C. § 404(d)(2)(A)(ii).

Effective and regular service. The Postal Service contends that it has considered the effect the closing will have on postal services provided to Mallory customers. Postal Service Comments at 8. It asserts that customers of the closed Mallory post office may obtain retail services at the Central Square post office located 5 miles away. Final Determination at 2. Delivery service will be provided by rural carrier through the Central Square post office. *Id.* The 31 post office box customers may obtain Post Office Box service at the Central Square post office, which has 234 boxes available. *Id.*

For customers choosing not to travel to the Central Square post office, the Postal Service explains that retail services will be available from the carrier. *Id.* at 7. The Postal Service adds that it is not necessary to meet the carrier for service since most transactions do not require meeting the carrier at the mailbox. *Id.*

Petitioner asserts that closing the Mallory post office would negatively impact the operation of his business. Petition at 1. He objects to the increased time and expense of having to travel 6 miles to another post office. Participant Statement at 1-2. The Postal Service addresses Petitioner's concern by stating that services provided at the post office will be available from the rural carrier. Postal Service Comments at 7.

The Postal Service has considered the issues raised by customers concerning effective and regular service as required by 39 U.S.C. § 404(d)(2)(A)(iii).

Economic savings. The Postal Service estimates total annual savings of \$45,037. Final Determination at 5. It derives this figure by summing the following costs: postmaster salary and benefits (\$44,279) and annual lease costs (\$3,800), minus the cost of replacement service (\$3,042). *Id.*

Petitioner contends that the Postal Service will not realize the full amount of its estimated economic savings because the Mallory post office is being run by a PMR, not a postmaster. Participant Statement at 2.

The Commission has previously observed that the Postal Service should include in its estimate of savings those costs likely to be eliminated by the closing. The Mallory postmaster position became vacant on March 31, 2009. Final Determination at 2. The post office has since been run by an OIC who, upon discontinuance of the post office, either may be separated from the Postal Service or reassigned to a nearby facility. *Id.* at 5, 7. The postmaster position and the corresponding salary will be eliminated. See, e.g., Docket No. A2011-67, United States Postal Service Comments Regarding Appeal, October 24, 2011, at 13; Docket No. A2011-68, United States Postal Service Comments Regarding Appeal, November 2, 2011, at 10. Furthermore, notwithstanding that the Mallory post office has been staffed by an OIC for almost three years, even assuming the use of the presumably lower OIC salary, the Postal Service would have satisfied the requirements of section 404(d)(2)(A)(iv).

The Postal Service has satisfied the requirement that it consider economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

VI. CONCLUSION

The Postal Service has adequately considered all requirements of 39 U.S.C. § 404(d). Accordingly, the Postal Service's determination to close the Mallory post office is affirmed.

It is ordered:

The Postal Service's determination to close the Mallory, New York post office is affirmed.

By the Commission.

Ruth Ann Abrams
Acting Secretary

DISSENTING OPINION OF CHAIRMAN GOLDWAY

I dissent because the Administrative Record is inaccurate or insufficient with regard to economic savings. As such, the Postal Service has not adequately considered economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

The Postal Service argues that savings should be calculated based on a full-time postmaster's salary. Yet the Mallory post office has been operated by an officer-in-charge (OIC) since the former postmaster was reassigned on March 31, 2009. On the one hand, the Postal Service argues that the effect on employees of this closing will be minimal; yet on the other hand, it argues that the savings should be calculated using a full-time position.

There are inherent and blatant contradictions in the record that must be corrected on remand.

It is not the statutory responsibility of the Commission to correct the Administrative Record for the Postal Service and certainly not to make its own surmise about what and/or whether there would be savings if accurate data was in the Administrative Record. Therefore, the decision to close should be remanded to the Postal Service to correct the Administrative Record and present a more considered evaluation of potential savings.

The Commission has recently issued its Advisory Opinion in Docket No. N2011-1, pointing to the fact that its closing plans do not optimize the network. In the case of Mallory, the failure to undertake actual retail network optimization is exhibited by the Postal Service selecting for closure a post office with revenue that actually increased each year from 2008 to 2010. This proposed closing should be reconsidered in this light as well.

Moreover, the Postal Service recently announced a moratorium on post office closings. It is confusing and perhaps unfair to require some citizens whose post offices have received a discontinuance notice as of December 12, 2011 to gather evidence and pursue an appeal to the Commission, while others whose post offices were in the review process but had not yet received a discontinuance notice by December 12, 2011 have the respite of a 5-month moratorium.

The citizens of Mallory, New York and their concerns regarding the loss of a neighborhood post office should be afforded the same opportunity to be heard and considered as the citizens of the approximately 3,700 post offices fully covered by the moratorium.

Ruth Y. Goldway

DISSENTING OPINION OF VICE CHAIRMAN LANGLEY

The Postal Service did not adequately comply with 39 U.S.C. § 404.

Under section 243 of the Postal Service's Handbook PO-101, August 2004, if a decision is made to continue proceeding with a discontinuance investigation, the Operations manager must "then develop a questionnaire and send it to customers for additional information and comments."

The Mallory post office provides service to 31 post office box holders and 134 delivery customers. Final Determination at 2. However, the Final Determination states that "28 questionnaires were distributed to delivery customers of the Mallory post office." *Id.* It appears that 137 customers were not sent the questionnaire, which denied them the opportunity to present their views on the Administrative Record.

In addition, the Administrative Record is unclear if the Postal Service adequately considered the economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

On March 31, 2009, the postmaster of the Mallory post office was reassigned. The Administrative Record indicates that since that time, a temporary officer-in-charge (OIC) is operating the post office. The Administrative Record, however, is unclear if the OIC is a non-career postmaster relief (PMR) or a career employee on temporary assignment to operate the post office. Administrative Record, Item 15 at 1, Item 18 at 1, Item 33 at 1, Item 41 at 1, Item 42 at 1, Item 44 at 1, and Item 47 at 2, 5, 6. Final Determination at 2, 5, 6.

If the OIC is a career employee on temporary assignment, it could be that the salary and benefits are comparable to an EAS-11 postmaster. But, if the OIC is a PMR, then the cost savings analysis should reflect that a PMR has been in charge of this facility since March 2009, not an EAS-11 postmaster. As a government entity, the

Postal Service should ensure that its cost/benefit analysis accurately identifies capturable cost savings and does not overstate savings.

I find that the Postal Service's decision to discontinue operations at the Mallory post office is unsupported by evidence on the Administrative Record and thus, should be remanded.

Nanci E. Langley